

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 91993-001

v

Blue Cross Blue Shield of Michigan
Respondent

/

**Issued and entered
this 14th day of October 2008
by Ken Ross
Commissioner**

ORDER

**I
PROCEDURAL BACKGROUND**

On August 7, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on August 14, 2008.

The Petitioner is enrolled for health care benefits through the Michigan Education Special Services Association (MESSA). The coverage is underwritten by Blue Cross Blue Shield of Michigan (BCBSM). The Commissioner notified BCBSM of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on August 26, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the MESSA *Super Care 1 2003 Revision Plan Coverage Booklet* (the booklet). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not

require a medical opinion from an independent review organization.

II FACTUAL BACKGROUND

The Petitioner began receiving outpatient psychotherapy from XXXXX, MA, CNS, in 2002. BCBSM covered the therapy until February 2008 when it informed the Petitioner that it had paid the claims in error because XXXXX was an ineligible provider. BCBSM gave the Petitioner until April 11, 2008, to conclude treatment or find an eligible mental health therapist, and denied coverage for care provided by Ash after April 11, 2008.

The Petitioner appealed BCBSM's decision to deny further coverage for therapy from XXXXX. BCBSM held a managerial-level conference on June 12, 2008, and issued a final adverse determination dated June 18, 2008.

III ISSUE

Is BCBSM required to further cover the Petitioner's treatment by XXXXX?

IV ANALYSIS

Petitioner's Argument

According to the Petitioner, on September 30, 2002, she was told by a MESSA representative over the telephone that services provided by XXXXX were covered if XXXXX was supervised by a fully licensed psychologist and the claims were filed under the psychologist's tax ID number. The Petitioner notes that the booklet says that outpatient psychotherapy provided by a fully licensed psychologist is a covered benefit.

The Petitioner indicates that she received psychotherapy from XXXXX, a registered nurse who is a specialist in child and adolescent psychiatric and mental health nursing, and that XXXXX has been supervised by XXXXX, PhD, a fully licensed psychologist. The Petitioner says her therapy from XXXXX was paid when the claims were filed as directed by MESSA.

In February 2008 the Petitioner received a letter from MESSA that said the care provided by

XXXXX was not a covered benefit and the services had been paid in error. The Petitioner asserts that in all her conversations with MESSA and in the written claim filings it was clear that it was XXXXX who provided the care, and that the claims were always paid.

The Petitioner believes that her therapy with XXXXX is a covered benefit and that MESSA and BCBSM must continue to cover it.

BCBSM's Argument

BCBSM acknowledged that it initially covered XXXXX's services but says it was done in error and that it must abide by the terms and conditions of the certificate. Section 15.6 of the booklet, "Outpatient Psychotherapy," states:

Services must be provided by a licensed physician, a fully licensed psychologist, or a Michigan MSW who is a member of the Academy of Certified Social Workers, or obtained at a participating BCBSM outpatient psychiatric care center.

BCBSM says that XXXXX does not meet the booklet's eligibility criteria: XXXXX is a certified nurse specialist in mental health. While she provides services in the office of XXXXX, PhD, and bills on the letterhead of Dr. XXXXX, it is she, not Dr. XXXXX, that provides the services. Further, XXXXX's services are not performed in a participating outpatient psychiatric care facility. Therefore, BCBSM says she is not an eligible provider.

BCBSM understands that it is not easy to change therapists and so it gave the Petitioner an additional 60 days of coverage after it determined that XXXXX was not an eligible provider.

Commissioner's Review

The Commissioner is sympathetic to the Petitioner's situation. She received treatment for several years from a provider that she says has helped her. The Petitioner believes her relationship with XXXXX is critical to her continued improvement and adjustment. She thought for years that the therapy was a covered benefit and was understandably upset when she learned that it will no longer be covered.

Nevertheless, the booklet requires that mental health and substance abuse treatment be

provided by an “eligible provider” and XXXXX does not meet the booklet’s criteria. XXXXX is a registered nurse and a certified specialist in child and adolescent psychiatric and mental health nursing. She is not “a licensed physician, a fully licensed psychologist, or a Michigan MSW who is a member of the Academy of Certified Social Workers.” Therefore, she is not an eligible provider and her services are not a covered benefit.

Although BCBSM erred when it began covering XXXXXs services, there is nothing in the booklet or state law that would require BCBSM to continue covering the therapy after it recognized the error. The Commissioner concludes that BCBSM correctly applied the terms and conditions of the booklet when it denied further coverage.

V ORDER

BCBSM’s final adverse determination of June 18, 2008, is upheld. BCBSM is not required to cover the Petitioner’s therapy from XXXXX after April 11, 2008.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.